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नई दिल्ली, शनिवार, मार्च 20, 1993/ फाल्गुन 29, 1914

No. 11]

NEW DELHI, SATURDAY, MARCH 20, 1993/PHALGUNA 29, 1914

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (III) PART II—Section 3—Sub-section (III)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासकों को छोड़कर) द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 11 फरवरी, 1993

अ.प्र. 67.—लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का 43) की धारा 13क की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत निर्वाचन आयोग गोवा सरकार के परामर्श से, आर्थिक विकास निगम गोवा के प्रबंध निदेशक श्री बी. प्रसाद को कार्यभार ग्रहण करने की तारीख से भगते आदेशों तक गोवा राज्य के लिए मुख्य निर्वाचन अधिकारी के रूप में नामित करना है उन्हें निर्वाचन आयोग के प्रचीन निर्वाचनों से संबंधित राज्य सचिवालय में निर्वाचनों से संबंधित विभाग में सरकार के सचिव के रूप में भी पराधिकृत किया जाएगा।

2. आयोग ने नोट किया है कि प्रसाद के पास प्रबन्ध-निदेश, आर्थिक विकास निगम, 3 सार्वजनिक उपक्रमों के निदेशक मण्डल के अध्यक्ष और 4 लिमिटेड कम्पनियों के निदेशक मण्डल के निदेशक के रूप में प्रतिष्ठित कार्यभार है। आयोग गोवा राज्य में एक पूर्णकालिक मुख्य निर्वाचन अधिकारी रखने के लिए दबाव नहीं डाल रहा है क्योंकि राज्य में दो से अधिक संघीय निर्वाचन क्षेत्र नहीं हैं। तथापि, किसी साधारण निर्वाचन के सन्निकट होते ही भी प्रसाद को सभी ओर प्रत्येक प्रतिष्ठित कार्यभार से मुक्त कर दिया जाए और इस संबंध में एक अनुपालन रिपोर्ट आयोग को भेज दी जाए।

3. श्री बी. प्रसाद, मुख्य निर्वाचन अधिकारी, गोवा के रूप में कार्य करते समय आयोग की लिखित पूर्वानुमति लिए बिना उपर्युक्त पैरा 2 में उल्लिखित कार्यभारों के प्रतिष्ठित गोवा सरकार के प्रचीन कोई प्रतिष्ठित कार्यभार ग्रहण नहीं करेंगे।

4. यदि साधारण निर्वाचन के सन्निकट होते ही श्री प्रसाद को अपने सभी प्रतिष्ठित कार्यभारों से मुक्त नहीं किया जाता है प्रथम उपर पैरा 2 में उल्लिखित कार्यभारों के प्रतिष्ठित आयोग की लिखित पूर्वानुमति लिए बिना किसी भी प्रकार का कोई प्रतिष्ठित कार्यभार सौंपा जाता या आदेश दिए जाते हैं तो इस आदेश की शर्तों के अनुसार श्री बी. प्रसाद को ऐसा कार्यभार ग्रहण करने की तारीख से मुख्य निर्वाचन अधिकारी, गोवा के पद से हटा दिया जाएगा और कोई अन्य आदेश न तो जारी किया जाएगा प्रथम जारी करना आवश्यक समझा जाएगा। इसके पश्चात्, मुख्य निर्वाचन अधिकारी के रूप में उनकी क्षमताओं और कृत्यों के निर्वाहन की गई सभी प्रथम कोई भी कार्यवाई अप्रतिष्ठित, अधिकांशतः रहित, नास्तिक और व्यर्थ तथा व्यर्थ माना जाएगा और उन्हें अपने आपको अनुशासनात्मक कार्यवाई के लिए प्रस्तुत करना होगा।

[सं. 154/गोवा/93]

आदेश से,

के. पी. जी. कुट्टी, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 11th February, 1993

O.N. 67.—In exercise of the powers conferred by sub-section (1) of Section 13A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission of India, in consultation with the Government of Goa, hereby nominates Shri B. Prasad, Managing Director of Economic Development Corporation, Goa as the Chief Electoral Officer for the State of Goa with effect from the date he takes over charge and until further orders. He will also be designated as Secretary to Government in the department dealing with elections in the State Secretariat dealing with elections under the Election Commission.

2. The Commission has noted that Shri Prasad has additional charge as Managing Director of Economic Development Corporation, Chairman of Board of Directors of three Public Sector Undertakings and Director on the Boards of Directors of four Limited Companies. The Commission is not insisting on a full-time Chief Electoral Officer in the State of Goa as the State has not more than two Parliamentary Constituencies. However, as soon as a General Election becomes imminent Shri Prasad shall be divested of all and every additional charges and a compliance report sent to the Commission.

3. Shri B. Prasad, while functioning as Chief Electoral Officer, Goa, shall not hold without the prior written approval of the Commission, any additional charge whatsoever under the Government of Goa over and above the charges mentioned in paragraph 2 above.

4. If Shri Prasad is not divested of all his additional charges as soon as a General Election becomes imminent or is entrusted with or ordered to hold any additional charge of any kind whatsoever over and above the charge mentioned in paragraph 2 above, without the prior written approval of the Commission, Shri B. Prasad will stand removed from the office of the Chief Electoral Officer, Goa from the date of assumption of any such additional charge in terms of this very Order and no other Order will, or need to be issued. All and any action taken by him thereafter in the discharge of his duties and functions as the Chief Electoral Officer shall be unauthorised, without jurisdiction, nonest and null and void and he shall render himself liable to disciplinary action.

[No. 154/GOA/93]

By Order,

K. P. G. KUTTY, Secy

नई दिल्ली, 14 फरवरी, 1993

अ. आ. 68.—लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का 43) की धारा 13क की उपधारा (1) द्वारा प्रबल शक्तियों का प्रयोग करते हुए, भारत निर्वाचन आयोग पश्चिम बंगाल सरकार के परामर्श से, श्री एन. के. एम. साहा, आई. ए. एस. पश्चिम बंगाल सरकार के सचिव को मुख्य निर्वाचन अधिकारी के रूप में, उनके कार्यभार ग्रहण करने की तारीख से और भगने आदेशों तक, इसके द्वारा नामित करता है।

2. श्री एन. के. एम. साहा के अधीन सभी पदभार या किसी कार्य के पदभारों को तत्काल सौंप दें या धारण करना समाप्त कर दें, ओ कि वे ऐसे पदभार ग्रहण करने से पहले धारण कर रहे थे। किसी अपवाद की अनुमति नहीं दी जायेगी।

3. मुख्य निर्वाचन अधिकारी पश्चिम बंगाल के रूप में कार्य करते हुए श्री एन. के. एम. साहा को यह आदेश दिया जायेगा कि वे पश्चिम बंगाल सरकार के अधीन किसी प्रकार का कोई अनिश्चित कार्यभार नहीं ग्रहण करेंगे, सिवाय इसके कि उनको राज्य सचिवालय में निर्वाचन आयोग के अधीन विभाग के प्रभारी सरकार के सचिव नामित किया जायेगा जैसा कि राज्य सरकार द्वारा निर्णय लिया गया

4. श्री एन. के. एम. साहा को आयोग के पूर्व लिखित अनुमोदन के बिना किसी भी प्रकार का कोई अनिश्चित कार्यभार सौंपा या ग्रहण करवाया जाये तो वे हम आदेश के अनुसार ऐसा अनिश्चित कार्यभार ग्रहण करने की तारीख से मुख्य निर्वाचन अधिकारी पश्चिम बंगाल के पदभार से छाप छाप हटा दिए गए समझे जाएंगे और किन्हीं अलग आदेशों को जारी करने की आवश्यकता नहीं होगी। उसके पश्चात्, मुख्य निर्वाचन अधिकारी के रूप में उनकी बूटी और कार्य के तथाकथित निवाहने में उनके द्वारा की गई सभी या कोई कार्रवाई अप्रसिद्ध और नास्तिक और शून्य होगी और उनके विरुद्ध अनुशासनात्मक कार्रवाई की जा सकेगी।

[सं. 154/प. बं./93]

आदेश से,

के. पी. जी. कुट्टी, सचिव

New Delhi, the 14th February, 1993

O.N. 68.—In exercise of the powers conferred by sub-section (1) of Section 13A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission of India, in consultation with the Government of West Bengal hereby nominates Shri N. K. S. Jhala, IAS, Secretary to Government of West Bengal as the Chief Electoral Officer for the State of West Bengal with effect from the date he takes over charge and until further orders.

2. Shri N. K. S. Jhala shall cease to hold and hand over forthwith the charge of all or any charges of work, under the Government of West Bengal which he may be holding before such assumption of office. No exceptions will be permitted.

3. Shri N. K. S. Jhala while functioning as the Chief Electoral Officer, West Bengal shall not be ordered to hold any additional charge whatsoever under the Government of West Bengal, except that he should be designated Secretary to the Government incharge of Department under the Election Commission in the State Secretariat as decided by the State Government.

4. If Shri N. K. S. Jhala is entrusted with or is made to hold any additional charge of any kind whatsoever, without the prior written approval of the Commission, he shall stand removed automatically from the office of the Chief Electoral Officer, West Bengal from the date of assumption of such additional charge as per this order and no separate orders will, or need to issue. All and any action taken by him thereafter in the so called discharge of his duties and functions as the Chief Electoral Officer shall be unauthorised and nonest and null and void and he shall render himself liable to disciplinary action.

[No. 154/WB/93]

By Order,

K. P. G. KUTTY, Secy.

नई दिल्ली, 19 फरवरी, 1993

अ.आ. 69.—निर्वाचन आयोग 19-अकोला संसदीय निर्वाचन-क्षेत्र से लोक सभा के लिए पांडुरंग पुंडलीक फुडकार के निर्वाचन को प्रशस्त करने के लिए 1991 की निर्वाचन अधीन सं. 2 में बम्बई स्थित उच्च न्यायालय के नागपुर पीठ के निर्णय को लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 106 के अनुसरण में इसके द्वारा प्रकाशित करता है।

(संलग्न आदेश यहां छापें)

[सं. 82/महा.-लो. स./2/91(नागपुर I)]

आदेश से,

बलराम सिंह, सचिव

New Delhi, the 19th February, 1993

O.N. 69.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgment, dated 5th March, 1993, of the High Court of Judicature at Bombay, Nagpur Bench, in Election Petition No. 2 of 1991, calling in question the election of Shri Pandurang Pundlik Fundkar to the House of the People from 19-Akola Parliamentary Constituency.

[No. 82/MT-HP/2/91(NAGPUR)]

By Order,

BALWANT SINGH, Secy.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR

ELECTION PETITION NO. 2 OF 1991

Sudhakar Ramkrushna Gangane,
aged about 43 years,
resident of Akot,
Yatra Chowk, Taluka Akot,
District Akola.

---PETITIONER.

Versus

1. Pandurang Pundlik Fundkar,
aged about 42 years,
resident of Khamgaon;
Civil Lines, Tq. Khamgaon,
District Buldhana;
2. Syed Azaruddin Syed Shamsoddin,
resident of Mangrulpir,
Jingar Galli, Tq. Mangrulpir,
District Akola;
3. Prakash Yeshwantrao Ambedkar,
resident of Bombay,
129/Rajgruha, Hindu Colony,
Dadar, Bombay-14;
4. Ganesh Uttamrao Patil,
resident of Akola, Alshi Plots,
Taluka and District Akola;
5. Professor Dr. Gopalrao Eknathrao Jagtap,
resident of Akola,
Moreshwar Colony, Tq. and Distt.
Akola;
6. Gangadhar Bhimashankar Ghodke,
resident of Khamgaon, Ambika Nagar,
Near Ghatpuri Naka, Taluka Khamgaon,
District Buldhana;
7. Shantaram Bapurao Janorkar,
resident of Mahan, Tq. and District
Akola;
8. Ramdas Ganduji Tayade,
resident of Malkapur,
Gorakshan Road, Akola, Taluka and
District Akola;
9. Dipankar Suryabhan Telgote,
resident of Akola, Ranpise Nagar,
Taluka and District Akola;
10. Dashrath Motiram Ghawat,
resident of Ghusrwadi,
Post : Mhatodi, Taluka and District
Akola;
11. Daudsha Ismailsha,
resident of Telhara, Ward No. 1,
Taluka Telhara, Distt. Akola;
12. Sumantrao Purushottamrao Deshmukh,
resident of Akola, Labour Colony,
Krishi Nagar, Ward No. 49,
Taluka and District Akola;
13. Prabhawati Jagannath Dhande,
resident of Jalgaon, Kanchan
Industries, G-80, M.I.D.C.,
Jalgaon, Taluka and District
Jalgaon (Khandesh);
14. Raju Dattuji Dhamne,
resident of Murtizapur,
Taluka Murtizapur, Distt. Akola;

15. Rajaram Baliram Navalkar,
resident of Akola, Gondpura,
Taluka and District Akola;
 16. Annasaheb Babarao Patil,
resident of Yerli, Taluka Nandura,
District Buldhana;
 17. Suganchand Pandurang Patil,
resident of Akola, Bapu Nagar,
Shankar Nagar, Tq. and District
Akola;
 18. Chandrahas Jagdeo Feran,
resident of Khamgaon, Foren Bhavan,
Gopal Nagar, Taluka Khamgaon,
District Buldhana;
 19. Bhai Rajnikant,
resident of Akola, Swatantra Sainik
Niwas, Panchshil Nagar, Taluka and
District Akola;
 20. Nandkishore Dhaniram Yadeo,
resident of Akola,
Mahadav Nagar, Post Gandhi Nagar,
Taluka and District Akola;
 21. Sau. Ratnaprabha Pandurang Wankhede,
resident of Akola, Akot File,
Ward No. 22, Taluka and District
Akola;
 22. Rajesh Yadao Wanjari,
resident of Akot File, Akola,
Taluka and District Akola;
 23. Sk. Shabbir Sk. Ismail,
resident of Akot, Shanwarpura,
Ward No. 35, Tq. Akot, District
Akola;
 24. Shrawan Daulat Wahurwagh,
resident of Akola, Ravi Nagar,
Taluka and District Akola;
 25. Sukhraj Mangru Maurya,
resident of Shivni, Taluka and
District Akola;
 26. Syed Sharif Syed Sikandar,
resident of Akot, Ward No. 21,
Taluka Akot, District Akola;
 27. Haridas Sitaram Ingle,
resident of Chandur, Taluka
Akola, District Akola;
 28. Sk. Hasan Sk. Madan Kadri,
resident of Akola, Jam Mohalla
Gawalipura, Tq. and District Akola;
 29. Returning Officer (Ramesh M. Umbale),
Akola Parliamentary Constituency,
Akola.
- S/Shri S. A. Bobde, D. B. Agrawal, and C. N. Adgaonkar,
Advocates, for the petitioner.
- S/Shri P. G. Palshikar and S. P. Palshikar and Smt.
M. A. Khadakkhar, Advocates, for the respondent
No. 1.
- Shri Anilkumar Thakkar, Advocate, for respondent Nos.
2, 4, 8 to 10, 12, 14, 15, 17 and 23.
- Smt. K. V. Sirpurkar, Advocate, for respondent Nos.
22 and 28.
- S/Shri P. P. Patil, GP, and Jagtap, AGP, for respondent
No. 29.

CORAM : M. S. DESPANDE, J.

Dated : 4th & 5th March, 1992.

ORAL JUDGMENT.—The petitioner, who was a candidate for the election from 19-Akola Lok Sabha Constituency, challenges the election of the respondent No. 1, the returned candidate, and seeks a declaration that the election of the respondent No. 1 is null and void on account of his having committed corrupt practices under sections 123(2), 123(3) and 123(3A) of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act'); and a further declaration that he has been elected from the said Constituency and alternatively, if the second relief cannot be granted for holding fresh election in the said Constituency.

2. The petitioner and respondent Nos. 1 to 28 contested the election for the Lok Sabha from Akola Parliamentary Constituency, the notification for which under section 14 of the Act was published on 19th April, 1991, in the Gazette of India. The last date for filing nomination papers was 26th April, 1991. The scrutiny of the nomination papers was done on 27th April, 1991, and after the date for withdrawal of candidature, the poll was to be held on 23rd May, 1991. The date of the poll was however, adjourned to 12th June, 1991. The respondent No. 1, the candidate of Bhartiya Janta Party ('BJP' for short) was declared elected having secured 2,01,800 votes. The petitioner was the close second, having obtained 1,56,687 votes. The petitioner and respondent Nos. 2 to 28 lost the election.

3. The contention of the petitioner is that the respondent No. 1 practised undue influence and committed corrupt practices within the meaning of sub-sections (2), (3) and (3A) of section 123 of the Act, in view of his having solicited the votes on the ground of his religion by representing that he was a candidate for the Hindus, set up by the Hindus and for the Hindus and that Hindus should vote for him on the ground of his religion. He propagated that he and his party alone would promote and foster the cause of Hindu religion. Though several instances had been pleaded in the petition, by the order passed on 9th and 10th December, 1991, upon the preliminary objections raised by the respondent No. 1, large parts of the petition were ordered to be struck down and the challenge was restricted only to the distribution of voter-slips, as per Exhibit 24A annexed to the petition, and the speeches of Sadhvi Rutumbhara in the public meeting at Akola on 20th May, 1991, and the public meeting addressed by Acharya Dharmendraji Maharaj in the Open Air Theatre of the Municipal Council, Akola on June 8, 1991. In both these meetings, the speakers exhorted the voters to vote for the candidates sponsored by the BJP on the ground of their religion, while directing venom against Muslims generally. According to the petitioner, these meetings came to be addressed by the two speakers with the consent and connivance of the respondent No. 1, in order to further his prospects at the election. In view of these corrupt practices, it is being urged that the election of the respondent No. 1 is liable to be set aside.

4. The respondent No. 1, by his written-statement filed on 8-10-1991 and the reply (Exhibit 74) to the amended paragraph Nos. 11 and 12 of the petition, denied that he either distributed the voter-slips which bore the contents as in Annexure 24A to the petition, or that the two meetings, which had been addressed by the Sadhvi Rutumbhara and Acharya Dharmendraji Maharaj, made appeals to the voters to vote for him on the ground of his Hindu religion. According to the respondent No. 1, the two meetings were held under the auspicious of Vishwa Hindu Parishad ('VHP' for short) and had not been arranged by him and they were not held either with his consent or connivance.

5. The respondent Nos. 4, 8, 9, 10, 12, 14, 15, 17, 22 and 23 filed a joint written-statement and are not at issue with the petitioner. The Returning Officer (respondent No. 29) did not also join issues with the petitioner and rested content with the statement that since the allegations were directed against the respondent the respondent No. 1 he was not aware of the facts mentioned in the petition.

6. The issues, which are for decision, are stated below with my findings :—

ISSUES	FINDINGS
(1) (a) Does the petitioner prove that the respondent No. 1 published and distributed the voters' slips as per Ex. 24A wherein vote was solicited by mentioning Ram in Ayodhya?.....	No.
(b) Does this amount to an appeal to vote for the respondent No. 1 on the ground of his religion?	No.
(2) (a) Does the petitioner prove that Sadhvi Rutumbhara Devi addressed a public meeting at Akola on 20th May, 1991 on the grounds of	

Mungilal Bajoriya Vidyalaya making an appeal to the voters to vote for the respondent No. 1 on the ground of his religion?

Yes.

(b) Does the petitioner prove that the appeal on the ground of religion was made by Sadhvi Rutumbhara Devi with the consent and connivance of the respondent No. 1 and in order to further his prospects at the election?

No.

(3) (a) Does the petitioner prove that a public meeting was addressed by Acharya Dharmendraji Maharaj in the open air theatre of the Municipal Council, Akola on June 8, 1991 appealing to the voters to vote for the respondent No. 1 on the ground of his religion?

Yes.

(b) Does the petitioner prove that this was done by Acharya Dharmendraji Maharaj with the consent and connivance of the respondent No. 1 in order to further his prospects at the election?

No.

(4) Does the petitioner prove that the respondent No. 1 thereby committed a corrupt practice under section 123(3) of the Representation of the People Act?

No.

(5) Does the petitioner prove that the election of the respondent No. 1 is liable to be set aside, in view of the corrupt practices alleged?

No.

7. The petition gives the back-ground of the events which led to the forming of an alliance between the BJP, VHP, Shiv Sena, Bajrang Dal and the like, beginning with a rally held in New Delhi on 4th April, 1991 in support of the plea that there was an electoral alliance between the VHP and the BJP wherein the issue of constructing Ram Mandir by demolishing Babri Masjid at Ayodhya was projected. Reliance was placed on a news-item (Exhibit-50) appearing in the issue of Hitavada dated 15th April, 1991. P.W. 19 Banwarilal Purohit was examined to show that the contents of Exhibit 50 were true. He stated that the write-up from Delhi Bureau has credibility and normally whatever is received from Delhi Bureau is printed as it is in Hitavada of which he is the Managing Editor. The only corrections that are made are in the spellings and some such small errors. The write-up from Delhi Bureau appear on the front page if the Hitavada with a bold heading—VHP rally swears by Mandir. The rally was held prior to the issue of the notification regarding the election with huge portrait of Lord Ram and the replica of the proposed Sri Ram Temple forming the backdrop of the big stage, where over two hundred Hindu saints, VHP, RSS and BJP leaders were seated. Banwarilal Purohit is said to have been greeted as the proceedings started and Acharya Dharmendraji Maharaj described him as a Rashtra Purush and epitome of Ram Shakti. There is a reference to a speech by Shri Atal Bihari Vajpayee about Babri Masjid having become a barrier to the communal peace in the country, and if the temple construction could begin before the election, then it would not remain an election issue. The report also refers to a speech made by VHP Secretary, Ashok Singal and some fiery speeches by Sadhvi Rutumbhara and others, and the arrival of Dr. Murli Manohar Joshi, President of BJP, and Lal Krishna Advani, when the rally was half-way through. Dr. Joshi is said to have said, "Ram is Bharat and Bharat is Ram", and had observed that Kashmir would be liberated. There is, however, nothing in this report to show that the VHP and the BJP took a decision there to make the building of Ram Mandir a common electoral issue.

8. On behalf of the petitioner, reliance was placed on the portion of the Election Manifesto of BJP, at page 5, which reads as follows :

"SHRI RAM MANDIR AT JANMASTHAN"

BJP firmly believes that construction of Shri Ram Mandir at Janmasthan is a symbol of the vindication of our cultural heritage and national self respect. For BJP it is purely a national issue and it will not allow any vested interests to give it a sectarian and communal colour. Hence party is committed to build Shri Ram Mandir at Janmasthan by relocating super imposed Babri structure with due respect."

The respondent No. 1 denied having read the report in the HITAVADA to which reference has been made in some detail above. Reference was also made on behalf of the petitioner to Exhibit-46, which is a report in Farun Bharat with New Delhi date line of 5th April, 1991, to the effect that leaders of VHP and religious leaders had entered the field for canvassing for the BJP, and it contains a portion which reads that after the BJP leaders had said on 4th April at the massive rally at New Delhi that they would make the necessary efforts for the construction of Ram Mandir at Ayodhya, the VHP had declared that it would support the BJP, and a resolution had been passed to that effect in the Council of the VHP.

9. The submission of Shri Palshikar, learned Counsel for the respondent No. 1, was that the news item (Exhibit-46) cannot be read in evidence for the truth of its contents, and there is no reference anywhere in the pleading to a post election arrangement between the VHP and the BJP regarding projecting the Ram Mandir issue jointly at the election. P.W. 17 Vilas Dhok, who produced the issue (Exhibit-46), stated that the press trust material, on which this news item was based, had not been preserved. It is well settled that the production of a press report, by itself, is not evidence of the truth of the contents. Besides this, there is no material on the basis of which the arrangement could be inferred. Indeed, it was observed in *Samant N. Balakrishna v. George Fernandez (AIR 1969 SC 1201)* :

"A news item without any further proof of what had actually happened through witnesses is of no value. It is at best a second-hand secondary evidence. It is well known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process, the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible. A fact has first to be alleged and proved and then newspaper reports can be taken in support of it but not independently."

There is no direct evidence in the present case to show that the VHP and the BJP were electoral allies and they projected the same issue in the same manner and had a common objective on the basis of which it could be said that VHP was agent of the BJP for the purposes of the election propaganda and whatever the VHP did, had the implicit consent of the BJP. In the absence of proof of these factors, nothing turns merely upon the newspaper reports unless something more is shown, that the speeches and actions of the VHP were the result of an agency between the two parties and had the consent of each other.

10. Issue No. 1(a) and (b).—The pleading originally with regard to the distribution of voters-slips was very cryptic and read only : "Exhibit-24A is a voter-slip published and distributed by the respondent No. 1, wherein also vote is requested by mentioning Ram in Ayodhya" and by an amendment made on 10th December, 1991, it was stated inter alia, that although the name of publisher is shown as Raju Agarwal, the expenses of printing of these voters-slips were incurred by the respondent No. 1. The voter-slips were received from the respondent No. 1 and his workers and the workers of BJP and were distributed to almost all the voters in the Constituency. In these voters identity cards, appeal was made by the respondent No. 1 to vote for him. Though the respondent No. 1 has denied that he had issued such voter-slips it would be necessary to examine what is the import of the voter-slip which appears at Exhibit 24A to the petition and was marked as X-1 for identification in the course of the evidence. The first two paragraphs only

refer to the respondent No. 1 being the candidate of the BJP and having been elected in the election of 1989 from the same Constituency. According to the petitioner, the offending portion is what followed :—

तथापि राष्ट्रप्रीत्याचे पुष्टकरण करणारा व या राष्ट्रप्रीत्या संस्कृतचा मानविद् असणारा राष्ट्रपुरुष रामचंद्राला म्हणजेच पर्यायाने कोटा कोटा जनतेच्या अस्मितेला अपमानित करणारा विवृत मनोवृत्तीच्या संवोसाण मुळे मल्याधवा निवडणूका घडित झाल्यात. बंधू भगिनीनो ह्या वेळच्या निवडणूका अमृतपुर्व ठरणार आहेत. देशाच्या राजकारणास एक विधायक वळण मिळाले, देशाचा एकता व अखंडता टिकावी तसेच खऱ्या अर्थाने बेकारास काम, महंगाईस लक्ष्म, शेतमालास दाम आणि अयोध्येत राम म्हणजेच राष्ट्रपुनर्निर्माणासाठी याही वेळा पुन्हा कसळ निजानां बर शिक्का मारून या देशाचा राज्यस्थ रामराज्याच्या दिशेने चालविण्याचा संघा एकदा भारतस जनता पार्टीला आव्हान दिविस प्रार्थना .

The substance would be that the mid-term election had been necessitated owing to the perverted mentality of the opportunists who lent support to the traitors and insulted Ramachandra, the high point of the nation's culture. It was necessary to maintain the unity and integrity of the country, to provide work for the unemployed, curtail inflation, ensure proper prices for the agricultural produce and existence of Ram in Ayodhya, and for bringing about a national regeneration and establishing Ram Rajya, the vote should be given to BJP.

11. On behalf of the petitioner, it was contended that the reference to Ramchandra, who is a Hindu deity, and the establishment of Ram in Ayodhya and working towards Ram Rajya, amounted to an appeal to the voters to vote for the respondent No. 1 on the ground of his religion. It is also urged that it was necessary to take into consideration the existing political situation in the country and if so viewed, there can be no mistaking of the fact that a religious colour was lent to the appeal and the appeal was to vote for the respondent No. 1 only by reason of his religion. An analysis of the contents of the voter-slip would, however, show that it stated the back-ground in which the mid-term election had to be held, and even Shri Bobde, learned Counsel for the petitioner, conceded that it would be difficult for him to contend that the reference to the immediate back-ground, which led to the holding of the mid-term election, would amount to an appeal on the ground of religion. He, however, urged that the reference to 'Ayodhet Ram' which, in effect meant construction of Ram Temple by demolishing Babri Masjid, would be an essential part of this appeal, because in the context of the political controversy then existing the reference to relocation of Ram Mandir in the Election Manifesto of BJP cannot be read otherwise than as projecting the demolition of Babri Masjid and construction of Ram Mandir in its place.

12. In *Shubnath Deogam v. Ram Narain Prasad (AIR 1960 SC 148)* the question arose whether a leaflet addressed to the electorate mainly consisting of adivasis issued by the candidates party consisting of adivasis, in the name of a "cock" which was the party's symbol in the election and which, amongst the adivasis, formed a very important integral part of religious ceremonies, invoked the wrath of the deities on the electorate in case they forgot the cock, i.e., forgot to vote for the party of which it was the symbol, was an appeal on the ground of religion, and it was held by majority that an appeal that it would be a religious act to vote in a certain manner would be an appeal on the grounds of religion. However, the proposition in the minority judgment delivered by Subbarao, J. in that case was accepted by a 5-Member Bench of the Supreme Court in *Ramanbhai Achabbai Patel v. Dabhi Ajitkumar Fulsinji (AIR 1965 SC 669)*; that being :

"A distinction must, therefore, be drawn between canvassing on grounds of religion and seeking of votes in graphic or picturesque language with analogies

from religious lore; to illustrate, a candidate may appeal to the electorate consisting of persons professing different religions, say Hindus, Mohammadans, Christians etc., to vote for him and say that he would sacrifice his life in the cause of his constituency just like Christ sacrificed his life to redeem the world. He may also say that like Rama, the virtuous, who killed Ravana, the rakshasa, the embodiment of evil, he would, if elected, put down corruption, nepotism and the like in Government. He may even say that he would sacrifice himself as a goat before Kali to bring happiness and prosperity to his constituency. All these similes are drawn from religion, but they do not embody an appeal, directly or indirectly, to vote for the candidate on the grounds of religion."

In Ramanbhai's case (supra), it was further observed that a reference to prophets or religions or to deities venerated in a religion or to their qualities and deeds does not necessarily amount to an appeal to the religious sentiment of the electorate. Something more has to be shown for this purpose as indeed according to the majority of the Judges who decided the Shubnath's case, was established therein. To bring the illiterate electors within the mischief, it must be shown additionally that either there would be a danger to their religion, or they would suffer miseries of wrath of God or that they should cast their vote for a particular candidate whose election symbol is associated with a particular religion just as the Cross is with Christianity.

13. Shri Bobde, however urged that the observations in Ramanbhai's case, were that if a particular object or a plant, a bird or an animal associated with a deity is used in such a way as to show that votes are being solicited in the name of that deity or as would indicate that the displeasure of that deity would be incurred if a voter does not react favourably to that appeal, it may be possible to say that this amounts to making an appeal in the name of religion. In the present case, as is apparent from the contents of the voter-slip, what the respondent No. 1 did was to ask for vote for him and his party for achieving Ram Rajya which, as is commonly understood, means good Government and not necessarily the Government of a particular religion. Shri Bobde tried to point out that if the manifesto itself said that the BJP believes in the construction of Ram Mandir at Janmasthan as a symbol of vindication of cultural heritage and national self-respect, there can be no mistaking that there was an appeal on the ground of religion. What, however, is overlooked is the portion which follows, and it says that the party views it as a purely national issue and will not allow any vested interests to give it a sectarian and communal colour and its commitment to build Shri Ram Mandir at Janmasthan by relocating super imposed Babri structure with due respect.

14. It is not possible to overlook the raging controversy of the time, while construing the document which has to be read as a whole. Indeed, it was observed in *Kulhar Singh v. Mohinder Singh* (AIR 1965 SC 141) that political issues which form the subject matter of controversies at election meetings may indirectly and incidentally introduce considerations of language or religion, but in deciding the question as to whether corrupt practice has been committed under section 123(3), care must be taken to consider the impugned speech or appeal carefully and always in the light of the relevant political controversy. There Sikh voters were solicited for the Panth, appealing that victory of the Panth will maintain the honour of the Panth and while maintaining such honour, the goal of Punjab Suba could be reached. This appeal was addressed to resident-Sikhs. In para-9 of the report, it was observed that the principles which had to be applied in construing such a document are well settled. The document must be read as a whole and its purport and effect determined in a fair, objective and reasonable manner. In reading such document, it would be unrealistic to ignore the fact that when election meetings are held and appeals are made by candidates of opposing political parties the atmosphere is usually surcharged with partisan feelings and emotions and the use of hyperboles or exaggerated language, or the adoption of metaphors, and the extravagance of expression in attacking one another, are

all a part of the game, and so, when the question about the effect of speeches delivered or pamphlets distributed at election meetings is argued in the cold atmosphere of a judicial chamber, some allowance must be made and the impugned speeches or pamphlets must be construed in that light.

15. It is in the light of these principles that the contents of the voter-slip will have to be understood. The question would be, whether 'Ayodhyet Ram' lent a religious favour to the appeal to vote for the respondent No. 1. From the original vernacular portion, it is clear that the last of the factors 'Ayodhyet Ram', was not used for making an appeal to vote on the ground of religion, but more probably because it rhymed well with the other three factors—

"बेकारास काम, महुर्वास लगन, शेतमदान दान",

and it is not possible to read the contents of the voter-slip as an appeal on the ground of religion so as to come within the mischief of sub-section (3) of section 123 of the Act.

16. Shri Palshikar, learned Counsel for the respondent No. 1, urged that even otherwise, it has not been shown that the contents of Exhibit 24A to the petition (document marked as X-1 for identification) were the same as those of the slips issued by the BJP. P.W. 16-Raju Agrawal, whose name appeared as the publisher of the voter-slips and who worked with the BJP at the Parliamentary Election, stated that he had received the voters slip such as the document marked X-1, and since the slips were not available, some people from the locality decided to raise contributions and print such cards. They collected small amounts and got such cards printed, without asking for the format of voter-slip from BJP office. He stated that he did not give the material for printing himself when the order was given to Rajeshwar Printers. He was not in a position to state that the matter which was printed at his instance was from line to line the same, as in the document marked X-1. He had not met the respondent No. 1, nor had his consent for printing such slips and he did this on his own. He could not also say from memory whether the copy which he had given for printing had the words "Ayodhyet Ram". He asked the printer to include the photo of respondent No. 1, if it was available with him and he paid Rs. 140 for the 4000 slips which were printed at his instance. In her evidence, Mrs. Tople (R.W.2), who was the District President of Akola BJP and the State President of the Women's Wing from BJP, admitted that there is a practice of issuing voter-slips and that BJP had printed slips at the election, but she could not recollect what type of voter-slip it was and had not received a voter slip like the document marked X-1. Dr. Nagmote (R.W.1), the Vice President of Akola District BJP, stated that he did not do the work of printing and distributing voter-slips and that he did not print any voter-slips for the party and no other slips were issued from the party for the election. Shri Bobde commented that they both are partisan witnesses and their version should not be given credence. However, it was for the petitioner to establish that the slips such as the document marked X-1, Dr. Nagmote (R.W.1), the Vice-President of the BJP or were printed at the instance of the respondent No. 1. The pleading of the petitioner was that though the name of Raju Agarwal appeared as the publisher, the money for printing had been paid by the respondent No. 1. Raju Agarwal stated that he had himself printed the slips and had paid for them, and there is no evidence to show that the respondent No. 1 paid for printing of any slips. Indeed Raju Agarwal's evidence shows that he had not printed the slips with the consent of respondent No. 1.

17. Reference may be made to the evidence of PW-29 Gursilal Sharma, a partner of Rajeshwar Printers, who was shown the slip (Exhibit 64) which is identical with the one marked as X-1 for identification. He stated that he had not printed the slips on white paper but on blue, green and pink paper. He could not say whether the material had been printed in his Printing Press, and could not recollect what were the contents of the voter-slips printed, because as a printer he did not read the contents of the material to be

printed. According to him, the photo of the respondent No. 1, which appeared on the printed material, had been given by Raju Agrawal, while Raju Agrawal stated that he had asked the printer to get the photo himself. He admits that he had received the payments from someone who came on behalf of Raju Agrawal. Shri Bobde urged that in view of the close association of Gyarsilal with the BJP, because his offset Printing Press had been inaugurated by Dr. Murli Manohar Joshi, the President of BJP, it was evident that Gyarsilal would not support the petitioner. However, the pleading was only that it was really the respondent No. 1 who got the voter-slips printed by showing Raju Agrawal as the publisher, and had paid the money. This is the only pleading by which the respondent No. 1 was sought to be connected with the voter-slips and, as I have already indicated, this has not been established.

18. With regard to the contention of Shri Bobde that it could not have been possible for the petitioner to procure easily the evidence which would show the nexus between the offending documents and the returned candidate, obviously the difficulty in proving the consent would not absolve the petitioner from discharging that burden.

19. In this connection, it was urged that the first respondent should have produced the original voter-slips which he had printed, in response to the notice to produce documents served on him. The respondent No. 1 stated that Bandu Panchbhai was in charge of getting the voter-slips printed and paying the expenses, and when he enquired whether any voter-slips were left, he was told that none were left and this work had been given to Amar Enterprises. Amar Enterprises does not have a Press and one of its partners, Amarlal is the brother of Gyarsilal (PW-29). PW-18 Tolaram Chauhan, Deputy Election Officer, stated that in the return of expenses filed by the respondent No. 1, it was mentioned that Rs. 32,144.00 had been paid to Amar Enterprises for printing voter-slips. Amar Enterprises could not be examined, though several chances were granted to the petitioner to produce that evidence. Since Raju Agrawal's evidence shows that fresh printing had to be undertaken, because the earlier stock of voter-slips had been exhausted, no inference can be drawn from the non-production of the voter-slips by the respondent No. 1. In any event, it was for the petitioner to adduce evidence showing that the particular voter-slips had been printed by the respondent No. 1 and to dispel any reasonable doubt regarding the contents of those voter-slips, and the evidence is woefully wanting in this respect.

20. On behalf of the petitioner, reliance was placed on *M. Chenna Reddy v. V. Ramachandra Rao* (Vol. XL, Election Law Reports 390), where the failure of the appellant to examine the host and other important persons who attended the party given in the list of witnesses furnished by the appellant, and to deny the allegations against him, was held to be serious infirmity in the plea of the appellant, and the only reasonable inference to draw, therefore, was that if these witnesses had come to give evidence, they would not have supported the appellant. It was also said there that such an inference can be drawn against a party who does not call evidence which should be available in support of his version. The submission of Shri Bobde was that it was necessary for the respondent No. 1 to show that the contents of the voter-slips, admittedly printed for the election of the respondent No. 1, were different from those of the document marked X-1. This view in *M. Chenna Reddy's* case was overruled in *Surinder Singh v. Hardial Singh* (AIR 1985 SC 89) where it was observed that for over 20 years the position has been uniformly accepted that charges of corrupt practice are to be equated with criminal charges and proof thereof would be not preponderance of probabilities as in civil action, but proof beyond reasonable doubt as in criminal trials in view of the several decisions of Supreme Court, including that of a larger Bench in *Mohan Singh v. Bhanwar Lal* (AIR 1964 SC 1366), and all the co-ordinate Benches. In *Razik Ram v. J. S. Chouhan* (AIR 1975 SC 667), it was pointed out that just as in a criminal case, so in an election petition the respondent against whom the charge of corrupt practice is levelled, is presumed to be innocent unless proved guilty. A grave and heavy onus, therefore, rests on the accuser to establish each and every ingredient of the charge by clear, unequivocal and unimpeachable evidence beyond reasonable doubt, as the commission of a corrupt practice entails serious penal consequences. It not only vitiates the election of the candidate concerned but also disqualifies him from taking part in elections for a considerably long time.

21. The petitioner relied also on the evidence of distribution of the voter-slips. Shrikrishna Makode (PW-1), Pramod Taore (PW-2) and Wasudeo Kulkarni (PW-9) stated that they had written the voter-slips and that they were paid remuneration for doing the writing work. The respondent No. 1, in his evidence, denied that he had engaged these persons for writing the voter-slips, and so did Dr. Nagmote (PW-1). Shrikrishna, Pramod and Wasudeo stated that the slips on which they wrote the names of the addresses were similar to the document marked X-1 for identification. Shrikrishna stated that Nagmote paid the remuneration to those who wrote the slips, after obtaining the money from the respondent No. 1, and the only basis for this version was that he had seen Dr. Nagmote being handed over money, on one or two occasions, by the respondent No. 1, but Shrikrishna did not know if the money was handed over for this purpose. He had not been told by Dr. Nagmote that the respondent No. 1 had paid him the money for the expenses. The document X-1, which Shrikrishna claims to have written, was not deposited with the BJP Office, though the addressee could not be found. Since he claimed to be a BJP worker, it was curious that he should have handed over the document to the petitioner for the purposes of this petition. Pramod Taore also stated that he had received money from Dr. Nagmote who was paid by respondent No. 1, but he could not say when the money was paid by the respondent No. 1 to Dr. Nagmote, nor the amount which was paid. According to him, the scribes used to write only the names of the persons to whom the slips were issued. Wasudeo (PW-9) claims to have distributed the slips at Akola, at Rs. 50 per day, but he could not tell the date on which he started distributing the slips. Though he stated that the purpose of the writing was that the voters should vote for BJP for creation of Hindu Rashtra, that obviously is not the writing in the voter-slips. He claims to have told the petitioner about 5 to 7 days before his evidence that he would tell the truth, when it was asked by the petitioner whether he would say this, though he was not acquainted with the petitioner.

22. Reliance was also placed on the evidence of the persons who stated that they had received such slips and they are PW-11 Madhukar Kamble, the Joint Secretary of the Congress; PW-12 Ramchandra Goenka, whose name appeared in an appeal made by certain persons to vote for the respondent No. 1 at the election; PW-13 Surendra Shaha; and PW-21 Ramkrishna Nikhade, Branch Manager of a Seeds Company. Madhukar Kamble and Ramchandra Goenka, as already stated, are partisan witnesses, as they belonged to the same party as the petitioner, and they made no complaint on any occasion to any of the authorities that an appeal on the ground of religion was being made for securing votes. PW-13 Surendra Shaha stated that after he received the slip like document marked X-1, he felt that by 'Ayodhya Ram', it was meant that the BJP would build Ram Mandir in Ayodhya. He was a Congressman and says that he left Congress in 1986 as he had differences with the local Congressmen. He was also a member of Sanjay Gandhi Niradhar Yojna for Akola City. His interest in the petitioner is, therefore, obvious. PW-21 Ramkrishna Nikhade produced the voter-slip (Exhibit-55) and stated that when the BJP worker brought the slip to him, the respondent No. 1 accompanied him to his place, obviously, in an attempt to show that the respondent No. 1 directly distributed the voter-slips, a circumstance which the respondent No. 1 denied.

23. Three other persons, whose names had not been disclosed in the original list of witnesses filed by the petitioner, viz., PW-24 Anil Mhasne; PW-25 Ganpat Khadse; and PW-26 Rajaram Nimbalkar, were examined to show that they had received the voter-slips (Exhibits 64, 67 and 70) which are identical to the document marked X-1. It is interesting to note that in the application (Exhibit 61), which the petitioner filed on 13-2-1991, he has stated that he had come to know only the day before about these witnesses, though the evidence of these three witnesses shows that the slips had been given to the workers of the petitioner long back. Anil says that his slip was lying with other papers in his house and he searched it out and gave it to petitioner's workers when they enquired about it with him, about 25 days before 13-2-1992. PW-25 Ganpat stated that he had taken the slip with him to the polling booth, but brought it back, though the purpose of the voter-slip is only to inform the voter about the booth where he is to vote and his number in the voter-list. PW-26 Rajaram states that the BJP workers gave the slip

(Ex. 70) to him before 23-5-1991 and when the petitioner's workers came to him after 12-6-1991, he gave the slip to them about one-and-a-half months before he gave his evidence to the petitioner's workers. It is remarkable that all these voter-slips show the name of the publisher as Raju Agrawal, and from this, it is difficult to infer, in view of what has been stated earlier, that the slips had been distributed by the workers of the BJP with the consent of the respondent No. 1.

24. Shri Bodhe urged that there was no reason why these persons, with whom the respondent No. 1 and Dr. Nagmote admittedly had no quarrel, should have come forward to speak about their having received these voter-slips, and that their evidence should be regarded as trustworthy. I have already referred to the factors which make the evidence unacceptable. Relying on *Rahim Khan v. Khurshid Ahmed* (AIR 1975 SC 290), it was urged that the motive for circulating these voter-slips was to help the respondent No. 1, and the circulation of the voter-slips can be accepted. However, as the Supreme Court has pointed out in that case, precedents on legal propositions are useful and binding, but the variety of circumstances and peculiar features of each case cannot be identical with those in another and judgments of Courts on when and why a certain witness has been accepted or rejected can hardly serve as binding decisions. In *Kantji Prasad Javshankar Yagnik v. Purshottamdas Patel* (AIR 1969 SC 851), the decision turned on a manuscript written by the candidate himself setting out the programme of Shambhu Maharaj with whom the candidate had toured and had attended his meetings and that cannot be regarded as a parallel in the present case. These decisions, therefore, are of no assistance to the petitioner.

25. I must, therefore, hold that it has not been proved that the respondent No. 1 published and distributed the voter-slips as per Ex. 24-A to the petition (document marked X-1) wherein vote was solicited by mentioning Ram in Ayodhya and that it did not amount to an appeal to vote for the respondent No. 1, on the ground of his religion.

26. Issue No. 2 (a) and (b).—Before I come to the evidence adduced for seeking to connect the respondent No. 1 with the meeting by Sadhvi Ritambhara, it is necessary to determine whether the transcript of the speech alleged to have been made by her, in a public meeting at Akola, on 20th May, 1991, made an appeal to the voters to vote for the respondent No. 1 on the ground of his religion.

27. The main theme of the speech of Sadhvi Ritambhara as is apparent from the transcript, was the construction of a temple of Ram at Janmasthan in Ayodhya. While criticising the Government for taking the demand lightly for over 40 years and asserting that Babri Masjid had been built at Ayodhya by an alien who had raided India, the emphasis was that it was a relic of foreign domination which injured the pride of India and the Hindus. It is not necessary to refer to the criticism of the actions of the several political leaders belonging to the opposition, including Prime Ministers Rajiv Gandhi, V. P. Singh and Chandrashekhar, except that in addition to the criticism, which was quite permissible by virtue of their being leaders of political parties, the thrust was on their apathy to the construction of Ram Mandir. There was an exhortation to the Hindus not to dissociate from Ram Mandir, with the promise that those who will work for Hindu interest would rule the country while criticising the action of Mulayam Singh as a murderer of people and responsible for their blood. Though she claimed that she did not belong to any political party, including BJP, and was not responsible to them, she stated that since the BJP followers were travelling in the direction of the construction of the Temple of Shri Ram, they should be supported.

28. Though Shri Palshikar, learned Counsel for the respondent No. 1, urged that the speech should be read as a whole for determining whether it amounted to an appeal to vote on the ground of religion, he was not in a position to say how, in view of what had been stated, it could not be regarded as an appeal to vote for the BJP candidates on the ground of the Hindu religion. The exhortation was to Hindus by reference to the movement started by VHP for construction of Ram Mandir, to vote for BJP candidates who wanted to construct the temple, in pursuance of the resolve of the Saints to reach BJP to Delhi. She stated that she had not come for election propaganda, but her speech would influence the election and that she was not sold to any party. The appeal to vote on the ground of religion is inescapable, though at the same time, she made it clear in her own speech that she was not sold to any party, including the BJP.

29. It was urged on behalf of the petitioner that the consent of the respondent No. 1 to whatever Sadhvi Ritambhara said at the meeting would be apparent from the fact that the video recording was made at the instance of the respondent No. 1, that he had arranged for the transport of the people from Akot to Akola for attending the meeting by engaging trucks and had also made arrangements for announcing the date and the venue of the meeting at Akot.

30. It must, however, be said that there is no pleading about the transporting of people for attending the meeting from Akot to Akola, and the part of the evidence which has bearing on this point shall have to be excluded from consideration. The evidence of P.W. 3 Mohan Wade purports to show that he owns a truck and Mahadeorao Bodke (R.W. 4) and respondent No. 1 had approached him on 15-5-1991 and asked him to give his truck for the meeting to be addressed by Sadhvi Rutambhara at Akola, saying that they would put the diesel in the truck and that he had lent his truck to them without charging for the truck. Both, the respondent No. 1 and Mahadeorao (P.W. 4) denied that they had approached Mohan Wade for giving the truck. Nandu Joshi (P.W. 4) also stated that he had given his truck on 20-5-1991 for that purpose, by suspending the work of carting which he was engaged in doing at that time, and that he had not charged for the truck. It is noteworthy that apart from the absence of pleading, there is no documentary evidence to support their version. No passenger had been examined to show that free ride had been given in the trucks, at the instance of the respondent No. 1, to the people from Akot, for attending Sadhvi Rutambhara's speech at Akola. The type of evidence, which has been adduced by the petitioner in order to establish the corrupt practice, cannot be relied upon to prove such a grave charge as corrupt practice which would not only result in setting aside the election of the respondent No. 1, but would also have the effect of disqualifying him from contesting all future elections. The evidence regarding the respondent No. 1, arranging for the transport of the voters from Akot to Akola, cannot, therefore, be relied upon.

31. The evidence regarding the announcement of Sadhvi Rutambhara's meeting comes from P.W. 5—Kanhyyalal Thakur, the rickshaw driver, who speaks about his having called by Dr. Nagmote on 14-5-1991 for announcing the programme of Sadhvi Rutambhara in the town of Akot and the outskirts, as she was to address a meeting at Akola on 20-5-1991. The announcement was to be that Sadhvi Rutambhara was coming for the election campaign on behalf of BJP to support the candidature of respondent No. 1 and that the public should attend in large number at Akola. He also mentions that Dr. Nagmote had asked him to get the loudspeaker and battery-set from Laxman Ingle (P.W. 8) who had been asked to provide the material, and that he was paid Rs. 100 for plying the rickshaw for this purpose. He stated that he was paid for the first two days by Dr. Nagmote, which Dr. Nagmote (R.W. 1) denies in his evidence. He also mentions that on the third day, he was told by Dr. Nagmote that he did not have the money and that it would be paid after money was received from the respondent No. 1. A similar announcement is said to have been made also for the speech of Acharya Dharmendraji Maharaj from 5th to 8th June, 1991. On the day, on which Acharya Dharmendraji Maharaj's speech was given, the respondent No. 1 paid the money to him, when Dr. Nagmote told him that they had come for their dues. He admits that Ingle did not take any money from him for the loud-speaker and he got in all Rs. 1000 for the work he did for the election. Laxman Ingle (P.W. 8) stated that he fixed the loud-speaker to Thakur's rickshaw on a message from Dr. Nagmote for making the announcements regarding the speeches of Sadhvi Rutambhara and Acharya Dharmendraji Maharaj, and that he was paid Rs. 1000 by the respondent No. 1, when he came to Akot on 8-6-1991. He, however, stated that it was not his practice to ask the purpose for which the loud-speaker was required, as it used to be given on hire, and that Dr. Nagmote had not approached him directly, but it was Thakur rickshaw walla who gave him the message. It is apparent that for the amounts alleged to have been received, no receipt had been obtained or passed, nor was any person who had heard the announcement being made, examined as a witness. Both, Dr. Nagmote and the respondent No. 1, in their evidence, denied that Thakur's rickshaw was engaged and Laxman Ingle's loud-speaker had been taken. The evidence of the

respondent No. 1 and Satyanarayan Vyas (R.W. 5) as well as Prakash Sharma (P.W. 6) shows that on 8-6-1991, the respondent No. 1 had gone from Khamgaon to Akola and from Akola to Shegaon for holding a meeting, and this would show that he could not have been at Akot in the evening of 8-6-1991 when Thakur and Laxman Ingle could have been paid the amount, as they said. Apart from this, there is no pleading regarding the announcement having been made by these two persons, or by anyone, at the instance of the respondent No. 1, in the manner stated.

32. The link, that is sought to be established between the meetings addressed by Sadhvi Rutambhara and Acharya Dharmendraji Maharaj's speeches by showing that the respondent was responsible for giving publicity to the meetings, is too tenuous to merit credence. With regard to Sadhvi Rutambhara's meeting, P.W. 6—Balu Kokate stated that he received a message on 20-5-1991 that he had been asked by respondent No. 1 to go to Akola for recording on a video cassette the programme of Sadhvi Rutambhara, and that he received Rs. 2000 for this purpose. The meeting began at about 3.15p.m., on Bajoriya Ground. He had no occasion to see who had gathered at the place, because he started his work immediately, and he identified the video cassette (Exhibit-27) as the one which he had recorded, after it was played in Court for some time. According to him, the order was to prepare 20 to 22 copies of the cassette, after he prepared one, and he prepared 20 copies of the original cassette, after receiving Rs. 2000, at the rate of Rs. 100 per cassette. The cassette, that was left with him, was handed over to the petitioner, and that was the one which he had played in Court. It appears from his evidence that he never met the respondent No. 1 directly, nor was he given in writing the order for 20 cassettes, and that it was his practice to issue receipts for money received and to retain the duplicate, but no such receipts were got produced by the petitioner in this case. In view of the clear admission by the witness that the respondent No. 1 had not approached him for the cassette, and he had not disclosed the identity of the person who is said to have approached him for doing job for the respondent No. 1, it is impossible to hold that the respondent No. 1 was responsible for engaging him to prepare the Video cassette for Sadhvi Rutambhara's programme.

33. Shri Bobde, learned Counsel for the petitioner, urged that since Kokate had no interest other than the merely professional work which he had done, there was no reason why his account should not be accepted. However, the evidence of Kokate can only be accepted for showing that he had prepared the cassette but not for the purpose of establishing the connection of the respondent No. 1 with the preparation of the video cassette. Respondent No. 1 denied that Kokate had prepared this video cassette and stated that it was Vaze Photographer who had done this job, but he had not made any enquiry from Vaze and, according to him, there was an announcement after the meeting that whoever wanted a cassette could have it from Vaze. First respondent's version, in his cross-examination, however, cannot lend any assistance to the petitioner to fill in the gap and show that the respondent No. 1 was responsible for preparing the video cassette.

34. Two other witnesses—Ramchandra Goenka (P.W. 12) and Surendrakumar Shaha (P.W. 13) were examined to show that announcements were made on loudspeakers for Sadhvi Rutambhara's meeting. Ramchandra Goenka tried to say that there was an agreement between the VHP and the BJP to help each other in building the temple in Ayodhya, but obviously he did not know of any national leaders of these two parties having said so, and his information was based only on newspaper reports, and his version, therefore, would not be of any help to the petitioner. No importance can be attached to Goenka's version, because he was one of the signatories to the appeal made in the Matrubhumi, dated 10-6-1991, filed with the list (Exhibit 35), to vote for the respondent No. 1, and he was obviously a partisan witness. Surendrakumar spoke about hand-bills being issued and loud-speaker—announcements having been made by the BJP, RSS and VHP workers about the meeting, but none of those documents were produced. I have already pointed out that he is an ex-Congressman and an office-bearer of Sanjay Gandhi Niradhar Yojna, and in the absence of convincing material, which could have been produced to show that it was at the

instance of BJP or the respondent No. 1, that the meetings of Sadhvi Rutambhara and Acharya Dharmendraji Maharaj had been arranged, no responsibility can be fixed for the arrangement of these meetings on either of them.

35. The last circumstance urged was the presence of the respondent No. 1, at the meeting addressed by Sadhvi Rutambhara, Dr. Dhone (P.W. 28) spoke about an alliance between Shiv Sena and BJP, but on the basis of separate manifestoes for the election, and stated that there was a distribution of seats between these two parties. With regard to the meeting dated 20-5-1991 addressed by Sadhvi Rutambhara, where he was present, he stated that it was organised by VHP in connection with the movement for construction of Ram Mandir and at that meeting, respondent No. 1 was also present. He could not say for the benefit of which party, the meeting was held. Ashok Thakur (P.W. 27), a Police Inspector, who was responsible for sending reports of public meetings to the CID Office at Bombay and had instructions to cover all election meetings, stated that the meetings addressed by Sadhvi Rutambhara and Acharya Dharmendraji Maharaj had been arranged by VHP's Akola Branch, in connection with the movement for construction of Ram Mandir at Ayodhya. He stated that his information was based on what Constable Madhukar Joshi, who had attended the meetings in the course of his duties, had told him. Both, Mrs. Tople (R.W. 2) and the respondent No. 1 also assert that these two meetings were held by the VHP. Even Surendrakumar Shaha (P.W. 13) stated that the person who made the announcement for the meetings, was Subhash Deshpande of VHP. As I have already indicated, even the contents of the speech of Sadhvi Rutambhara show that she had not been addressing the meeting as the agent of any party, but on her own. It is, thus, clear that Sadhvi Rutambhara cannot be said to have acted as the agent of the BJP or the respondent No. 1.

36. With regard to the presence of the respondent No. 1 the pleading, which was introduced by the amendment of the petition, was that Sadhvi Rutambhara was received by the respondent No. 1 at the gate of the Bajoriya Vidyalaya and he also reached her upto the gate, after the speech was over, without dissociating from the views expressed by her. Wasudeo Kulkarni (P.W. 9) stated that he was sitting outside, because Sadhvi Rutambhara came late, and after she came, he went to the place of the meeting. Sadhvi Rutambhara and Dr. Dhone, MLA, alighted from the car and went towards the meeting, which was held in an open space, where the volunteers of Bajrang Dal made way for them, and Dhone's father garlanded her first and, amongst others, Pramila Tople and respondent No. 1 also garlanded her. Sadhvi Rutambhara and Dhone's father sat on the dias and the others sat elsewhere. It is clear from his evidence that the respondent No. 1 did not sit on the dias, but sat in the area which was reserved for Press, because he had arrived late and could not find a seat elsewhere. There is no reference anywhere in the evidence except that of Wasudeo Kulkarni to the respondent No. 1 having garlanded Sadhvi Rutambhara, nor is there any evidence to show that Sadhvi Rutambhara was seen up to the gate, after the speech by the respondent No. 1. Wasudeo Kulkarni does not mention this. Ramchandra Goenka (P.W. 12) spoke about the respondent No. 1 sitting near the dias but made no mention about the respondent No. 1 receiving and garlanding Sadhvi Rutambhara. He stated that respondent No. 1, alongwith others, also raised hands at the end of the meeting, but it is difficult to accept his version on this point. In fact, the evidence shows that a car had come up to the dias, after the meeting was over, and Sadhvi Rutambhara left by that car, and Surendrakumar Shaha (P.W. 13) further says that he cannot say if the respondent No. 1 had consented to the slogans raised by Sadhvi Rutambhara.

37. The evidence of Mrs. Tople (R.W. 2) and the respondent No. 1 (R.W. 7) shows that after the meeting, when they discussed the speech, they agreed that Sadhvi Rutambhara had taken an extreme stand. Shri Bobde, learned Counsel for the petitioner, urged that discussing the speech privately in this manner would not amount to dissociation by the respondent No. 1 with the views expressed by Sadhvi Rutambhara.

38. The question really is, whether there was a duty on the respondent No. 1, in the circumstances narrated above, to express dissociation with the stand taken by Sadhvi Rutambhara in the speech. It is clear that the meeting had not been arranged either by BJP, Mrs. Tople or the respondent No. 1, but by VHP. The respondent No. 1 was not sitting on the dias. It was not that people with similar ideologies alone attended the meeting. It is apparent that Mrs. Goenka and Mrs. Korpe, who belonged to Congress (I), had also attended the meeting and the audience was not restricted to people belonging to only one ideology.

The position in *Kanti Prasad Jayashankar Yagnik v. Purshottamdas Ranchhodas Patel* (AIR 1969 SC 851) was different, as already stated, as is apparent from para-38. There, the manuscript was written by the candidate himself who accompanied Shambhu Maharaj on his tour and attended the meetings which were addressed by Shambhu Maharaj. It was in that context that the Supreme Court observed that it had not been shown that the first respondent had dissociated himself with any of the remarks in the speeches. Such is not the situation here, and the respondent No. 1 could not needlessly be expected to dissociate with the views expressed at a meeting which he had not arranged but only attended and was one of the audience.

In *Samant N. Balkrishna v. George Fernandez* (AIR 1969 SC 1201) it was pointed out, while considering the provisions of section 100(1)(b) and 100(1)(d) of the Act that there must be some reason, and the reason was that an agent cannot make the candidate responsible, unless the candidate had consented to the act of the agent which materially affected the result of the returned candidate. In the case of any person (and he may be an agent), if he does the act with the consent of the returned candidate, there is no need to prove the effect on the election. In para-46, it was pointed out.

"We think that regard being had to the activities of Mr. Atre as editor and his own personal hostility to Mr. Patil on the issue of Sampurna Maharashtra Samiti, we cannot attribute every act of Mr. Atre to Mr. Fernandez. Mr. Chari is right in his contention that Mr. Atre's field of agency was limited to what he said as the agent of Mr. Fernandez and did not embrace the field in which he was acting as editor of the newspaper. It is also to be noticed that Mr. Atre did not publish any article of Mr. Fernandez, nor did he publish any propaganda material."

Then again, it was observed in para-50 that mere knowledge is not enough, and consent cannot be inferred from knowledge alone. In the present case either Sadhvi Rutambhara or Acharya Dharmendraji Maharaj can be regarded as the agents of the respondent No. 1, and there is no material to indicate that whatever either of them had said had been said in their capacity as the agents of the BJP or the respondent No. 1. They had their own views which they were propagating and merely because a person attended the meeting, where their views were being expressed, though knowledge of the views could be predicated, consent cannot be fastened on him merely from his presence at the meeting.

39. I, therefore, hold that though Sadhvi Rutambhara addressed a public meeting at Akola on May 20, 1991, on the grounds of Mungilal Bajoriya Vidyalaya, making an appeal to the voters to vote for the respondent No. 1, on the ground of his religion, the appeal was not made with the consent or connivance of the respondent No. 1 or in order to further his prospects at the election.

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40. Issue No. 3 :—Before considering the other factors, it is necessary to understand what had been said by Acharya Dharmendraji Maharaj in the meeting which he addressed on 8-6-1991. In the beginning of the speech, though he mentioned several other parties, he did not refer to BJP. In that long speech, he mentions that the people had not assembled at the meeting for entertainment, but with the resolve to

establish Hindu Rashtria; that the traitors would be removed from the Government and Ram Rajya would be established. This is followed by reference to the Bofors kickback; the harassment of the Tamilians in Sri Lanka and of non-Muslims in other countries, together with criticism of the policies of Rajiv Gandhi. After removal of the statue of Queen Victoria because she was a foreigner, it is mentioned that Babar's bearded goats could not be Swadeshi (local), and it was necessary to determine who belong to Ram and who, to Haram. Then, there is a reference to the capacity of seventy-Crores Hindus to remove all others and the vow that if they were not allowed to go to Ayodhya, the others would not be allowed to go Delhi and that the doors of the Parliament could be closed to them. The speech was replete with criticism of Muslims and appeals to the Hindus to vote for the Symbol 'Lotus' and the determination to renovate the temple at Ayodhya. Though Shri Palshikad urged that the speech, as a whole, shall have to be considered for ascertaining what was its impact and its appeal, whether it was on the ground of religion or not the more one reads the speech, the more clear it is that there was an appeal to vote on the ground of religion.

41. Shri Bobde relied on several circumstances to show that the meeting had been arranged by the BJP and the respondent No. 1. I have already pointed out that the circumstance that the meeting had been arranged and that the announcements came to be made by the BJP or the respondent No. 1, had not been pleaded. I have already dealt with the evidence bearing on this point and it is not necessary to go into it again.

42. P.V. 15-Biharisingh Thakur, the Deputy Chief Officer of the Municipal Council, Akola, stated that he had not received any application from VHP for the Open Air Theatre for 8-6-1991, though he had heard that Acharya Dharmendraji Maharaj was to address the meeting. P.W. 14-Gajanan Ghate, who was the Chief Officer of Akola Municipal Council, stated that he received an application on 5-6-1991 from BJP for making the theatre available on 8-6-1991 and the application (Ex. 39) was signed by Pawan Padia. Rs. 301 were received as rent and Rs. 200 as deposit, for which receipts were issued. The carbon copies of the receipts, dated 7-6-91, (Exhibits 40 and 41) were produced. According to him, even if the meeting is not held, the amount of rent is not refunded but only the deposit is refunded. The deposit Rs. 200 was refunded to Pawan Padia, Pawan Padia (R.W.3) was in-charge of the election matters of ward No. 69 and stated that many meetings had been held as a part of the election propaganda, but the meeting addressed by Acharya Dharmendraji Maharaj was arranged by VHP. He stated that he booked the Open Air Theatre, because on 8-6-1991 the meeting was to be addressed by the BJP leader Sikandar Bakht. The information regarding the tour of Sikandar Bakht was received on telephone by Pandit Kulkarni who had asked Pawan Padia to book the hall. Pawan Padia stated that he had announced this meeting, and no entries were made about the telephone message which used to be received. The information regarding the cancellation of Sikandar Bakht programme was received at the last moment and he was informed of it by Pandit Kulkarni on 8-6-1991.

43. Shri Bobde urged that the story, that the meeting was to be addressed by Sikandar Bakht, was an invention, and when the application was made on 5-6-1991, what was in contemplation was only that meeting was to be addressed by Acharya Dharmendraji Maharaj. It would have been easy for the petitioner to produce documentary evidence, viz., the advertisements in the newspapers either by the BJP or the respondent No. 1, that the meeting was to be addressed by Acharya Dharmendraji Maharaj, by showing that the publicity regarding that meeting had been done on 5-6-1991, or earlier. It was unlikely that if the meeting was to be addressed by Acharya Dharmendraji Maharaj, publicity would not have been given to his speech by the BJP, or the respondent No. 1. It was pointed out that no documentary evidence had been produced by the respondent No. 1 to show that the meeting was to be addressed by Sikandar Bakht and though it may have been cancelled later, Sikandar Bakht's meeting could not

have been arranged without any prior publicity. It must be remembered that the burden of establishing every material fact by cogent evidence lay on the petitioner and merely because Acharya Dharmendraji Maharaj addressed the meeting for which booking of the theatre had earlier been made, it cannot be inferred that Acharya Dharmendraji Maharaj's meeting had been arranged by respondent No. 1, or by the BJP.

44. Ashok Thakur (P.W.27), as already stated, has spoken about the meeting having been arranged by the VHP. Shri Bobde referred to the admission of the respondent No. 1, in his cross-examination, that he had consented to whatever Pawan Padia did as a worker of the party, at the time of the election. However, from this statement, it cannot be inferred that Pawan Padia had booked the Open Air Theatre for the meeting to be addressed by Acharya Dharmendraji Maharaj. The respondent No. 1 also stated that he got the information regarding the proposed tour of Sikandar Bakht, four days before the meeting in the newspapers or by issuing handbills. It was only on the midnight of 7-6-1991, after return from the tour, that he was told about the cancellation of Sikandar Bakht's tour and he did not know if there was publicity about the cancellation of that tour. It is clear that Acharya Dharmendraji Maharaj was a leader of VHP which had construction of Shri Ram Mandir at Ayodhya as one of its objectives, and there is no material on record from which it could be inferred that whatever he had been saying from public platform, was being done as an agent of respondent No. 1 or the BJP. He had his own independent identity, and unless positive evidence to show that all that Acharya Dharmendraji Maharaj had said in the public meeting had the content of the respondent No. 1, the statement of the appeals he had made would not bind the respondent No. 1.

45. Reference was made to the presence of the respondent No. 1 at this meeting. The respondent No. 1 stated that he had left Khamgaon in the morning and had come to Akola and had met several leaders and then went to the house of Mrs. Tople and took her to the Circuit House where workers from the rural area had gathered, and since Mrs. Tople wanted to attend the meeting to be addressed by Acharya Dharmendraji Maharaj, he dropped her at that place and then left for Shegaon. Mrs. Tople supports this version. The respondent No. 1's statement, that he left Mrs. Tople and then proceeded to Shegaon, is supported by Prakash Sharma (R".6) who had been working as the respondent No. 1's driver during the period of election and Satyanarayan Vyas (R.W.5), a BJP worker. The latter stated that the respondent No. 1 addressed the workers at 9.30 p.m. on 8-6-1991 at Shegaon and left at 11.30 p.m., for Akola. There was considerable criticism of the evidence of Prakash Sharma, because he did not know to whom the car, which he was driving belonged, and had not mentioned the place where Mrs. Tople had been left. Prakash was not the regular driver of the respondent No. 1 and obviously would not be interested in knowing whether the car, which he was driving, belonged to the respondent No. 1 or not, nor would he care to say, unless he was asked, where exactly Mrs. Tople was left on the respondent No. 1's way to Shegaon. There is no reason for disbelieving the respondent No. 1 and Mrs. Tople on this point.

46. Shaikat Ali (P.W. 10), Sub Editor of Matrubhumi, was examined in connection with the report of Acharya Dharmendraji Maharaj's programme on 8-6-1991. According to him, the Press Note of Acharya Dharmendraji Maharaj's programme was given from the copy furnished by VHP, but the original was destroyed after seven days, which is being relied upon for showing that the BJP candidate Pandurang Phundkar and the District BJP President, Mrs. Tople, were

listening to the speech from the audience. Shri Palshikar, learned Counsel for the respondent No. 1, rightly urged that no witness was examined to establish the truth of the contents of the press report and unless that was done, the mention of the presence of the respondent No. 1 at the meeting cannot assist the petitioner. Mrs. Tople was not in a position to say if the respondent No. 1 had come inside at the commencement of the speech, because there was a rush and they had parted company at that place.

47. Sureshchandra Gautam (P.W.20) stated that his friend Pawan Padia told him, when he had been to the Municipal office, to complain about the non supply of water, on a day prior to the meeting, that he had come for booking the Open Air Theatre and asked him to attend Acharya Dharmendraji Maharaj's meeting. According to him, the respondent No. 1 and Pramilitai Tople were present at the meeting on 8-6-1991. As already pointed out, Sureshchandra's name appeared in an appeal in the Matrubhumi dated 10-6-1991 (Ex. 35) to vote for the petitioner, and though he denied that he was either a Congress worker and had made that appeal, it is apparent that his evidence, being that of a partisan witness, cannot be trusted. He does not attribute any statement to Pawan Padia that Acharya Dharmendraji Maharaj's meeting had been arranged by the BJP.

48. Madhukar Kamble (P.W.11), the General Secretary of Congress (I) for Akola, had attended the meeting and spoke about the presence of Pramilitai Tople and the respondent No. 1 at meeting. He had himself not entered the place, as there was a facility of loud-speaker, and could not give names of BJP workers besides Mrs. Tople and the respondent No. 1 who were present, and had not seen them after they had entered the compound, or whether respondent No. 1 had left the place after leaving Mrs. Tople there, and then proceeded to Shegaon. Madhukar Kamble's evidence, therefore, does not show that the respondent No. 1 was present throughout the meeting addressed by Acharya Dharmendraji Maharaj, nor does it give a lie to the version given by the respondent No. 1 in this respect.

49. It is obvious from the evidence of the very witnesses that they had attended the meeting addressed by Acharya Dharmendraji Maharaj, though they did not share the ideology of the BJP or the respondent No. 1. Nothing would, therefore, turn upon the mere presence of the respondent No. 1 even if he were to have attended the meeting and it is not established that whatever Acharya Dharmendraji Maharaj had spoken had the consent of the respondent No. 1. There is, thus no evidence from which it can be safely inferred that the appeal by Acharya Dharmendraji Maharaj to vote for the BJP or the respondent No. 1 on the ground of religion, had the consent of the respondent No. 1, therefore, hold that though in the meeting addressed by Acharya Dharmendraji Maharaj in the Open Air Theatre of the Municipal Council, Akola, on 8th June, 1991, an appeal was made to the voters to vote on the ground of religion he did not do it either with the consent or connivance of the respondent No. 1 in order to further his prospects at the election.

50. Issue Nos. 4 and 5.—It follows that it has not been established that the respondent No. 1 committed a corrupt practice under section 123(2), 123(3) and 123(3A) of the Act. Consequently, the election of the respondent No. 1 cannot be set aside.

51. In the result, the Election Petition fails and is dismissed. The petitioner shall pay the cost of the respondent No. 1. The petitioner and the other respondents shall bear their own costs.

By the Court
Sd/- V. N. PARANJRE, Asstt. Registrar
High Court Bombay at Nagpur

आदेश

नई दिल्ली, 8 फरवरी, 1993

आ.न्र. 70.—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट विधान सभा के उप-निर्वाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन-क्षेत्र से हुआ है, स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तख्तीन बनाए गए नियम द्वारा अपेक्षित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है;

और उक्त अभ्यर्थियों ने सम्यक सूचना दिए जाने पर भी उक्त असफलता के लिए या तो कोई कारण अथवा स्पष्टीकरण नहीं दिया है या उनके द्वारा दिए गए अभ्यावेदन पर यदि कोई हो विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है।

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य-क्षेत्र की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

सारणी

क्र.सं.	निर्वाचन का विवरण	निर्वाचन-क्षेत्र की क्र.सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता
11.	गुजरात विधानसभा के लिए उप-निर्वाचन 1991.	155—बाग्रा	श्री पटेल अलिभाई इब्राहिम भाई, स्थान और पोस्ट पिपालिया ता. बगरा जिला भड़ोच गुजरात।
12.	—वही—	—वही—	श्री पटेल इलियास इब्राहिम, स्थान और पो.आ. बोरसामनी ता. बाग्रा, जिला भड़ोच गुजरात।
13.	—वही—	—वही—	श्री पटेल मोहम्मद हुसैन अहमदभाई श्रीगोल ता. जम्बूसर जिला भड़ोच गुजरात।
14.	—वही—	—वही—	श्री बघेला विजयभाई बहेचार भाई खाली फालिया स्थान और पोस्ट आफिस दाशन ता. -जिला भड़ोच गुजरात।

[सं. 76/गुज. वि.स./91 (उप)/4942]

आदेश से,
बलवंत सिंह, सचिव

ORDER

New Delhi, the 8th February, 1993

O.N. 70.—Whereas the Election Commission is satisfied that each of the contesting candidate specified in column (4) of the Table below at the Bye-Election to the Legislative Assembly as specified in column (2) held from the constituency specified in column (3) against his name has failed to lodge any account of his election expenses as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidate has either not furnished any reason or explanation for the said failure even after due

notice or the Election Commission, after considering the representation made by him, if any, is satisfied that he has no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the person specified in column (4) of the Table below to be disqualified for being chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State or Union Territory for a period of 3 years from the date of this order :—

TABLE

Sl. No.	Particulars of Election	S. No. and Name of the Assembly Constituency	Name and address of the contesting candidates
1	2	3	4
11.	Bye-Election to Gujarat Legislative Assembly, 1991.	155—Vagra	Shri Patel Alibhai Ibrahimbhai, At & P.O. Pipalia, Tal. Vagra, Distt. Bharuch, Gujarat.
12.	—do—	—do—	Shri Patel Ilyas Ibrahim, At & P.O. Vorasamni, Tal. Vagra, Distt. Bharuch, Gujarat.
13.	—do—	—do—	Shri Patel Mohmad Husain Ahmedbhai, Shrigol Falia, Pathnai Bhagol, Tal. Jambusar, Distt. Bharuch, Gujarat.
14.	—do—	—do—	Shri Vaghela Vijayabhai Bahecharbhai, Khali Faliya, At. & P.O. Dashan, Tal. Distt.—Bharuch, Gujarat.

[No. 76/GJ-LA/91(Bye)/4942)]

By Order,

BALWANT SINGH, Secy.

नई दिल्ली, 26 फरवरी, 1993

भा. प्र. 71.—लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का 43) की धारा 13क की उपधारा (1) द्वारा प्रवर्त शक्तियों का प्रयोग करते हुए भारत निर्वाचन आयोग ने लक्षद्वीप संघ राज्य के प्रशासन के परामर्श से श्री बी. के. सिंह के स्थान पर श्री जी. एस. बीमा, आई. ए. एस., प्रबंध निदेशक, लक्षद्वीप विकास निगम को कार्यभार ग्रहण करने की तारीख से और अगले आदेशों तक लक्षद्वीप संघ राज्य क्षेत्र के लिए मुख्य निर्वाचन अधिकारी के रूप में नामित करना है। उन्हें निर्वाचन आयोग के अधीन निर्वाचनों से संबंधित संघ राज्य क्षेत्र सचिवालय में निर्वाचनों से सम्बन्धित विभाग में सरकार के सचिव के रूप में पदाभिहित किया जाएगा।

2. आयोग ने नोट किया है कि श्री बीमा के पास प्रबंध निदेशक, लक्षद्वीप विकास निगम का प्रतिरिक्त कार्यभार है। आयोग लक्षद्वीप संघ राज्य के लिए पूर्णकालिक मुख्य निर्वाचन अधिकारी रखने के लिए दबाव नहीं डाल रहा है क्योंकि संघ राज्य क्षेत्र में 2 से अधिक संसदीय निर्वाचन-क्षेत्र नहीं है।

3. श्री बीमा लक्षद्वीप के मुख्य निर्वाचन अधिकारी के रूप में कार्य करते हुए आयोग की लिखित पूर्वानुमति के बिना लक्षद्वीप सरकार के अधीन

और उपरिलिखित पैरा 2 में उल्लिखित प्रभारों के प्रतिरिक्त कार्य भार नहीं ग्रहण करेंगे।

4. यदि श्री जी. एस. बीमा को पैरा 2 में उल्लिखित प्रभारों के प्रतिरिक्त आयोग की लिखित पूर्वानुमति लिए बिना किसी भी प्रकार का कोई प्रतिरिक्त प्रभार सौंपा जाता है तो इस आदेश की शर्तों के अनुसार श्री बीमा को ऐसा प्रतिरिक्त कार्य भार ग्रहण करने की तारीख से मुख्य निर्वाचन अधिकारी लक्षद्वीप के पद से हटा दिया माना जाएगा और कोई अन्य आदेश न तो जारी किया जाएगा अथवा जारी करना आवश्यक समझा जाएगा। इसके पश्चात् मुख्य निर्वाचन अधिकारी के रूप में उनकी खूटियों और कृष्यों के निर्वाहन में की गई सभी अथवा कोई भी कार्रवाई अप्राधिकृत, अधिकारिता सहित, नरित और व्यर्थ तथा शून्य मानी जाएगी और उन्हें अपने आपको अनुशासनात्मक कार्रवाई के लिए प्रस्तुत करता होगा।

[सं. 154/लक्षद्वीप/93]

आदेश से,

के. पी. जी. कुट्टी, सचिव

New Delhi, the 26th February, 1993

O.N. 71.—In exercise of the powers conferred by subsection (1) of Section 13A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission of India, in consultation with the Administration of Union Territory of Lakshadweep hereby nominates Shri G. S. Chima, IAS, Managing Director, Lakshadweep Development Corporation, the Chief Electoral Officer for the Union Territory of Lakshadweep with effect from the date he takes over charge and until further orders vice Shri V. K. Singh. He will also be designated as Secretary to Government in the department dealing with elections in the Union Territory Secretary dealing with elections under the Election Commission.

2. The Commission has noted that Shri Chima has additional charge as Managing Director, Lakshadweep Development Corporation. The Commission is not insisting on a full time Chief Electoral Officer in the Union Territory of Lakshadweep as the Union Territory has not more than two Parliamentary Constituencies.

3. Shri Chima while functioning as Chief Electoral Officer, Lakshadweep, shall not hold without the prior written approval of the Commission, any additional charge whatsoever under the Government of Lakshadweep over and above the charges mentioned in paragraph 2 above.

4. If Shri G. S. Chima is entrusted any additional charge other than the charges mentioned in paragraph 2 above, without the prior written approval of the Commission, Shri Chima will stand removed from the office of the Chief Electoral Officer, Lakshadweep from the date of assumption of any such additional charge in terms of this very Order and no other Order will, or need to, be issued. All and any action taken by him thereafter in the discharge of his duties and functions as the Chief Electoral Officer shall be unauthorised, without jurisdiction non-est and null and void and he shall render himself liable to disciplinary action.

[No. 154/LKD/93]

By Order,

K. P. G. KUTTY, Secy.